

King Canute and the Tide

By David Hearne, Researcher at the Centre for Brexit Studies

“They might as well vote to hold back the tide...”

That was the thought that struck me after I saw the results of last night’s parliamentary votes. The House of Commons voted (by 318 to 310, for nerds like me) to reject leaving the EU without a deal. Unfortunately for parliamentarians (and this is a fact that appears to shock many MPs), Westminster is not the centre of the known universe. Parliament could vote for the Sun to orbit the Earth, but few of us believe that celestial mechanics will suddenly be suspended due to parliamentary whim.

Similarly, voting to “reject” leaving without a deal is meaningless unless accompanied by concrete actions to try and put that in place. It is worth recapping how this might happen:

- Vote to rescind Article 50 (the “nuclear option”). This does not (and cannot, per the Court of Justice of the EU’s ruling on the matter) mean a tactical suspension. It must be “unequivocal and unconditional”. Crucially, for this to happen a vote would need to be scheduled (in all probability, this would probably mean a degree of acquiescence from the executive).
- Vote to extend Article 50. This would require the unanimous agreement of the rest of the EU member states. It is not something that Parliament can mandate.
- Vote in favour of a concrete Withdrawal Agreement.

In other words, just because MPs vote for a particular course of action, does not mean that it will occur. Yesterday’s (non-binding) vote to reject leaving the EU with no Withdrawal Agreement and Future Partnership declaration in place does not, by itself, alter the fact that the UK will leave the EU without either of those things on 29th March.

Indeed, in spite of the headlines, the results of the other 6 amendments are in many ways more interesting than this one. It probably won’t come as a surprise to anyone in the UK that the amendments proposed by Labour and the SNP were defeated. Even

Conservative MPs for whom leaving the EU without an agreement is anathema (such as Anna Soubry, Ken Clarke and Dominic Grieve), find themselves unable to support a motion put forward by Jeremy Corbyn and the Labour front bench.

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In other words, only about three of the seven amendments are of critical interest (the fourth remaining one essentially being subsumed into one of the others). Two of the amendments would have had a critical bearing on the Brexit process, and were essentially about MPs taking back control (if you'll pardon the slogan). Of course, it's worth noting that these would have had major constitutional ramifications because they would have wrestled control of parliamentary time away from the Government and in favour of backbenchers in an unprecedented way.

In light of clear parliamentary opposition to leaving the EU without some form of agreement (the so-called "no deal" scenario), it came as a surprise to me that the House of Commons rejected both the Grieve amendment and the Cooper-Boles amendment. The former would have wrestled control of parliamentary time away from the Government and allowed MPs time to vote on alternative Brexit arrangements. The latter was even more significant and would have allocated Parliament time to bring in a law to require the Government to request an extension to Article 50. Although the EU would have had to (unanimously) agree to the request, it appears likely that they would do so – albeit with preconditions.

It is particularly surprising that the Cooper-Boles amendment was not passed given that the opposition Labour Party was instructed to vote for it and it had the support of numerous Conservatives (notably including grandees such as Oliver Letwin). Unlike the amendment rejecting "no-deal" that was passed, this would have mandated a concrete course of action and specifically altered parliamentary procedure to make it happen. As it did not pass, control of the schedule now rests in the hands of the government (not backbenchers). As a result, the probability of leaving the EU without an agreement has now increased dramatically.

The final amendment (and one of only two that were passed) was that proposed by Sir Graham Brady and supported by the Government:

namely to accept the Withdrawal Agreement excepting the Protocol on Northern Ireland. The Prime Minister is therefore returning to Brussels in order to attempt to renegotiate this portion of the Agreement. The official line from the EU is that the Withdrawal Agreement is not open for renegotiation, although clarifications (including those with legal force) are possible. The Political Declaration is also seen as a work-in-progress, and as this latter document is not in any sense binding, there is no reason for it not to be aspirational to the point of involving a degree of wishful thinking on all sides.

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Unfortunately, this particular fudge will not work. For better or worse, whether due to a misplaced sense of the UK's importance or because of justifiable concerns about a gross erosion of sovereignty (delete per your own views), the House of Commons will not accept it. According to the press, in private Brussels is less absolute, believing that a degree of alteration might be feasible, although there is allegedly a sense that London will need to come down to Earth first. There are risks inherent in this strategy, however.

To begin with, it is unlikely that what is unacceptable now will suddenly be palatable in less than 2 months. True, the inexorable ticking of the clock will undoubtedly bring some MPs around to voting for the Withdrawal Agreement. Likewise, some in the UK's Parliament will be bought off (either using the usual inducements or through changes on the EU's side). However, the fact that the Brady amendment passed, in spite of all of the opposition parties voting against it and a number of Conservative defections should be a salutary reminder to all of us. Parliament is taking a considerably harder line than many of us anticipated and it would be unwise to assume that no-deal can somehow be magically averted at the last minute.

It might just be the case that the UK Parliament wants more than the EU feels able to offer (and vice-versa). In other words, we need to face up to the reality that a mutually acceptable "deal" simply cannot be crafted. It's fair to say that there is an overwhelming preponderance of evidence that the British populace do not want to leave the EU without an agreement. The EU and its member states certainly don't want that to come to pass. Parliament doesn't want it to

come to pass (as evidenced by yesterday's votes). However, that isn't enough: chicken is a dangerous game to play.